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In the

Supreme Court of the United States

October Term, 1973

No. A-1179

ANTHONY AKULICZ,

Petitioner,

vs.

MICHAEL S. WOLKE, SHERIFF OF MILWAUKEE COUNTY WISCONSIN,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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PETITION NOT PRINTED

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Petitioner prays that a Petition for Writ of Certiorari to review the judgment of the Supreme Court of the State of Wisconsin entered on March 5, 1973, be denied.

OPINION BELOW

Respondent adopts the "Record at page 62" herewith submitted in appendix form by the petitioner.

JURISDICTION

Respondent admits to the jurisdiction of this court to review this petition for a Writ of Certiorari under 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

1. The decision of the Wisconsin Supreme Court that petitioner has no constitutional right to the appointment of counsel is not in conflict with the decisions of this court holding that imprisonment of persons is unconstitutional under the Sixth and Fourteenth Amendment to the United States Constitution. The instant case is a civil contempt.

2. The Wisconsin Supreme Court in upholding the trial court's commitment for civil contempt did not deny petitioner equal protection of laws in violation of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth and Fourteenth Amendments of the United States Constitution do not apply to civil contempt commitments.

STATEMENT OF THE CASE

The Wisconsin State Supreme Court in a per curiam decision dated March 5, 1973, denied petitioner's application for a writ of habeas corpus on the grounds that:

> "Petitioner had no constitutional right because of his alleged indigency to the appointment of counsel at public expense, since the contempt was civil in nature. (Record p. 62)"

The Wisconsin Supreme Court then held:

> "After reviewing the record, this court finds no abuse of discretion in the trial court's finding petitioner in contempt of court for failure to obey the court's order." (Id)

THE PETITION SHOULD BE DENIED FOR THE FOLLOWING REASONS

I. THE DECISION OF THE WISCONSIN SUPREME COURT SUSTAINING COMMITMENT FOR CIVIL CONTEMPT BY THE TRIAL COURT DOES NOT RAISE A FEDERAL QUESTION OF SUBSTANCE, AND SPECIAL AND IMPORTANT REASONS DO NOT EXIST FOR CERTIORARI REVIEW.

II. THE WISCONSIN SUPREME COURT DECISION WAS DECIDED IN A WAY WHICH IS NOT IN CONFLICT WITH ANY APPLICABLE DECISIONS OF THIS COURT.

III. UNDER THE PROVISIONS OF SECTION 1257 (3) OF THE JUDICIAL CODE (28 U.S.C. SEC. 1257 (3)) AND RULE 19 OF THE SUPREME COURT RULES, THIS COURT'S AUTHORITY TO REVIEW ON CERTIORARI DEPENDS UPON THE EXISTENCE OF A SUBSTANTIAL FEDERAL QUESTION. THE CLAIM OF THE PETITIONER THAT THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION APPLY TO STATE COURT CIVIL CONTEMPTS CANNOT BE RECONCILED WITH ANY DECISIONS OF THIS COURT.

The nature of civil contempt is well documented in: *Uphaus v. Wyman*, 360 U.S. 72, 79 S. Ct. 1040, 3 L. Ed 2d 1090; *Shillitani v. United States*, 384 U.S. 364, 86 S. Ct. 1531, 16 Ed 2d 622; *Maggio v. Zeitz*, *333* U.S.

56, 68 S. Ct. 401, 92 L. Ed 476, all opinions of this court describing this civil remedy as means of securing compliance with judicial decrees.

Petitioner's attempted analogy of legal authorities on felony, misdemeanor, petty crimes and criminal contempts with civil contempt presents an "intellectually interesting and solid problem" as described by this court as reported in 30 L. Ed 2d 829, pp 841, 842. (Certiorari-Improvident Grant) by Sheldon Shapiro as follows:

> "Dismissing a writ of certiorari as improvidently granted, in *Rice v. Sioux City Memorial Park Cemetery, Inc.* (1955) 349 US 70, 99 L. Ed 897, 75 S. Ct.614, infra 13, the court referred to the requirement of Rule 19 of the Supreme Court Rules that there be 'special and important reasons' for granting a writ of certiorari, and the court also referred to the provision of Rule 19 relating to a state court's decision of 'a federal question of substance.' It was noted that a federal question might be 'of substance' in the sense that, abstractly considered, it might present an intellectually interesting and solid problem, but that the Supreme Court did not sit to satisfy a scholarly interest in such issues, nor did it sit for the benefit of particular litigants. It was noted also that 'special and important reasons' implied a reach to a problem beyond the academic or the episodic, and that this was especially true where the issues involved reached constitutional dimensions, for then there came into play regard for the Supreme Court's duty to avoid decision of constitu-

tional issues unless avoidance became evasion. It was concluded that if a recently enacted state statute had been properly brought to the Supreme Court's attention and the case thereby put into proper focus, the case would have assumed such an isolated significance that it would hardly have been brought to the Supreme Court in the first instance."

CONCLUSION

For the reasons stated above, certiorari should be denied.

Respectfully submitted,

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